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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,314	12/23/2004	Marcus Guzmann	102792-390(1105104)	9126
27389 7590 11/26/2008 NORRIS, MCLAUGHLIN & MARCUS 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022			EXAMINER DOUYON, LORNA M	
			ART UNIT 1796	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/519,314	Applicant(s) GUZMANN ET AL.	
	Examiner Lorna M. Douyon	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-15 and 18-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-15, 18-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. This action is responsive to the amendment filed on August 8, 2008.
2. Claims 1-8, 10-15, 18-42 are pending.
3. The rejection of claims 1-8, 10-15, 18-34 under 35 U.S.C. 112, second paragraph is withdrawn in view of Applicants' arguments.
4. The rejection of claims 1-8, 10-15, 20-22, 24, 26-32 and 34 under 35 U.S.C. 102(b) as being anticipated by Smerznak et al. (WO 99/00477) is withdrawn in view of Applicants' arguments.
5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 1-8, 10-15, 18-32 and 34 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Smerznak et al. (WO 99/00477), hereinafter "Smerznak".

Smerznak teaches a non-aqueous, particulate-containing liquid laundry detergent compositions which are in the form of a suspension of particulate material, essentially including colored speckles and preferably including peroxygen bleaching agent and an organic detergent builder, dispersed in a liquid phase preferably structured with a surfactant (see abstract). The speckles range in particle size to about 400 to 1500 microns and have a density less than about 1.4 g/cc, and the speckles comprise dye or

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pigment material in combination with a carrier which can be polyethyleneglycol (reads on plasticizer), polyacrylate or a polysaccharide (see page 2, lines 23-26) such as celluloses (see page 12, lines . Additional insoluble particulate material is also preferably suspended in the surfactant-containing liquid phase, wherein the particulate material can include peroxygen bleaching agents, bleach activators, organic detergent builders and inorganic alkalinity sources, having a size in the range from about 0.1 to 1500 microns (see page 2, last full paragraph). The additional solid phase particulate material which is dispersed and suspended within the liquid phase comprises from about 1% to 50% by weight (see page 13, lines 1-4). The preferred particulate material is a peroxygen bleaching agent which is coated with silicate, borate, sulfate or water-soluble surfactants (see page 13+). The composition can also include microencapsulated enzymes (see page 18, lines 4). The detergent composition may also optionally contain a polymeric material which serves to enhance the stability of the composition, and may thus act as thickeners, viscosity control agents and/or dispersing agents, for example, polymeric polycarboxylates like polyacrylates (see page 19 line 15 to page 20, line 4). The water content of the non-aqueous detergent composition should in no event exceed about 5% by weight of the composition (see page 22, lines 6-7) and the viscosity of the compositions ranges from about 300 to 5,000 cps (see page 22, lines 9-14). The compositions can be used to form aqueous solutions for use in the laundering and bleaching of fabrics (see page 24, lines 14-15). In Table II, Smerznak teaches a stable, anhydrous heavy-duty liquid laundry detergent which has pleasing blue speckles suspended throughout a generally opaque liquid composition (see entire

page 28). Smerznak also teaches that the bleaching agents comprise from about 1% to 30% by weight of the composition (see page 15, first full paragraph); organic builder salts, like alkali metal citrates, in amounts from about 2 to 20% by weight of the composition (see page 15, last paragraph to page 16, line 19); inorganic alkalinity salts in amounts from about 1% to 25% by weight of the composition (see page 16, line 20 to page 17, line 9); and inorganic detergent builders in amounts from about 2 to 15% by weight of the composition (see page 17, lines 18-28). Smerznak also teaches coated percarbonate and microencapsulated enzymes (see page 13, last two lines; page 14, lines 1-2; and page 18, lines 4-5). Smerznak, however, fails to disclose (1) a water content of greater than 5% by weight, (2) the interaction of the radiation emitted by the structured composition and colored speckles forming a third or fourth color, the transmittance of the composition and migration speed of the speckles in the structured composition, and (3) the composition having a salt content of at least 70% and wherein the salt comprises phosphate, citrate or sulphate; and the proportions of the encapsulating agent with respect to the particles.

With respect to difference (1) a *prima facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, see *Titanium Metals Corp. of America v. Banner*, 778F.2d 775,227 USPQ 773 (Fed. Cir. 1985). See MPEP 2144.051.

With respect to difference (2), even though Smerznak does not explicitly disclose the interaction of the radiation emitted by the structured composition and colored

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speckles forming a third or fourth color, the transmittance of the composition and migration speed of the speckles in the structured composition it would have been nonetheless obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the structured composition of Smerznak to exhibit similar, if not the same, characteristics as those recited because similar ingredients have been utilized.

With respect to difference (3), it would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of the salt and the encapsulating agent through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F2d 454,456,105 USPQ 233,235 (CCPA 1955).

7. Claim 33 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Smerznak as applied to the above claims, and further in view of Fonsny (US 4,846,992).

Smerznak teaches the features as described above. Smerznak, however, fails to disclose the composition in a pouch of polyvinylalcohol.

Fonsny teaches a similar composition which is gel-like (see abstract and col. 15, lines 15-20) and which is packaged in pre-measured dosage forms for single use in

pouches formed from water soluble materials such as polyvinyl alcohol (see col. 16, lines 3-10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to package the composition of Smerznak in a pouch made from polyvinyl alcohol because it is known from Fonsny that a similar composition can be packaged in pre-measured dosage forms in pouches formed from water soluble materials such as polyvinyl alcohol for ease in dispensing.

8. Claims 1-8, 10-15, 20-22, 29-32, 34-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broeckx (WO 00/47707).

Broeckx teaches laundry detergent products such as heavy duty aqueous or gelled liquid laundry detergents which include one or more low density particles and one or more particulate solids, such as enzymes, bleaching agents, builders, chelants, alkalinity sources and surfactants (see abstract). The low density particles include water soluble or water insoluble organic or inorganic materials, microspheres (liquid hydrocarbon-containing and/or gas-containing, and/or hollow) that result in a reduction of the tendency of the particulate solids within a laundry detergent composition to sediment and/or settle out of the laundry detergent composition (see page 6, lines 17-27; page 7, lines 10-17). The particulate solids have a particle size from 1-2000 microns (see page 6, lines 28-30), which may be encapsulated (see page 9, lines 14-15). Liquid laundry compositions can be in concentrated form and the water content is preferably less than 40%, more preferably less than 30% (see page 11, lines 17-22), and the

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density of the laundry detergent composition ranges from 400 to 1200 g/litre (see page 11, lines 5-6). The density difference between the density of a laundry detergent composition and the density of a particulate solid is less than about 0.2 g/mL (see page 10, lines 3-6). The heavy duty gel laundry detergent composition also comprises additional additives such as polymeric dispersing agents and dyes (see page 29, line 1), and the composition has a viscosity at 20 s^{-1} shear rate of from about 100 cp to about 4,000 cp (see page 29, lines 3-5), and is clear or translucent, i.e. not opaque (see page 29, line 20). Suitable dispersing agent (which reads on thickening agent) includes polycarboxylates derived from acrylic acid (see page 94, lines 1-14). The gel laundry detergent composition also comprises from 0 to about 10% electrolyte (see page 29, lines 21-27). Broeckx, however, fails to disclose (1) a water content of greater than 5% by weight, 20-50% or 35-50% by weight (2) the interaction of the radiation emitted by the gel and colored particles and solids forming a third or fourth color, the transmittance of the composition and migration speed of the particles/solids in the gelled composition.

With respect to difference (1), it would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of water through routine experimentation for best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff*

919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F2d 454,456,105 USPQ 233,235 (CCPA 1955).

With respect to difference (2), even though Broeckx does not explicitly disclose the interaction of the radiation emitted by the gel and colored particles and solids forming a third or fourth color, the transmittance of the composition and migration speed of the particles/solids in the gelled composition it would have been nonetheless obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the gelled composition of Broeckx to exhibit similar, if not the same, characteristics as those recited because similar ingredients have been utilized.

9. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broeckx as applied to the above claims, and further in view of Fonsny (US 4,846,992).

Broeckx teaches the features as described above. Broeckx, however, fails to disclose the composition in a pouch of polyvinylalcohol.

Fonsny teaches a similar composition which is gel-like (see abstract and col. 15, lines 15-20) and which is packaged in pre-measured dosage forms for single use in pouches formed from water soluble materials such as polyvinyl alcohol (see col. 16, lines 3-10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to package the composition of Broeckx in a pouch made from polyvinyl alcohol because it is known from Fonsny that a similar composition can be

packaged in pre-measured dosage forms in pouches formed from water soluble materials such as polyvinyl alcohol for ease in dispensing.

Response to Arguments

10. Applicants' arguments filed August 8, 2008 have been fully considered but they are not persuasive.

With respect to the obviousness rejection based upon Smerznak, Applicants argue that the presently claimed invention seeks to have a higher water content (greater than 5% to 65%) in contrast to Smerznak water content not exceeding 5% by weight.

The Examiner respectfully disagrees with the above argument because, as stated in paragraph 6 above, a *prima facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, see *Titanium Metals Corp. of America v. Banner*, 778F.2d 775,227 USPQ 773 (Fed. Cir. 1985). See MPEP 2144.051.

With respect to the obviousness rejection of claim 33 based upon Smerznak in view of Fonsny, Applicants argue the Fonsny does not remedy the deficiencies of Smerznak as discussed above.

The response above applies here as well.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/
Primary Examiner, Art Unit 1796

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